

APR 28 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BHUSHAN KUMAR,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-75165

Agency No. A077-810-587

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2009^{**}

Before: GRABER, GOULD, and BEA, Circuit Judges.

Bhushan Kumar, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") decision denying his motion to reopen so he could apply for asylum based on changed circumstances. We have jurisdiction

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005), and we deny the petition for review.

The BIA did not abuse its discretion in denying Kumar's second motion to reopen as untimely and numerically barred where the motion was filed nearly four years after the BIA's decision, *see* 8 C.F.R. § 1003.2(c)(2), and Kumar failed to demonstrate changed circumstances in India to qualify for the regulatory exception to the time and numerical limits for filing motions to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also* *Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) ("The critical question is ... whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.").

PETITION FOR REVIEW DENIED.